



**International Covenant
on Civil and Political
Rights**

Distr.
GENERAL

4 November 1999
CCPR/C/79/Add.115

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Sixty-eighth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Portugal (Macao)

1. The Committee considered the fourth periodic report of Portugal relating to Macao (CCPR/C/POR/99/4) at its 1794th and 1795th meetings, held on 25 and 26 October 1999, and adopted the following concluding observations at its 1806th meeting, held on 2 November 1999.

A. Introduction

2. The Committee welcomes the attendance of a large delegation, including a number of officials from the Macao Government. It wishes to express its thanks to the representatives of the State party for their detailed responses to the questions posed orally and in writing and the comments made by the Committee during its consideration of the report, and for their offer to supply further information in writing. The Committee regrets that, although it has received information on the legislation applicable before and after 19 December 1999, it has not been given enough detail on the subject or up-to-date statistics.

3. The Sino-Portuguese Joint Declaration, read in conjunction with the Memorandum of Understanding and the Basic Law, provides a legal basis for the continued

protection in Macao after 19 December 1999 of the rights specified in the Covenant. The Committee, moreover, wishes to reiterate its long-standing position that human rights treaties devolve with territory, and that States continue to be bound by the obligations under the Covenant entered into by the predecessor State. Once the people living in a territory find themselves under the protection of the International Covenant on Civil and Political Rights, they cannot be stripped of that protection on account of a change in sovereignty. (See documents CCPR/C/SR.1178/Add.1, SR.1200-1202 and SR.1453.) Consequently, the reporting requirements under article 40 of the International Covenant on Civil and Political Rights will continue to apply and the Human Rights Committee expects to receive and review reports in relation to Macao after 19 December 1999.

B. Positive aspects

4. The Committee notes with satisfaction the negotiations between the Portuguese and Chinese authorities to ensure legal continuity (article 8 of the Basic Law) and continued application of international treaties. It welcomes the fact that a large number of the rights and fundamental freedoms set forth in the International Covenant on Civil and Political Rights are enunciated in articles 24 to 44 of the Basic Law of Macao.

5. The Committee notes with satisfaction the great efforts which have been made in the past few years to give the Chinese-speaking population access to official forms and to court documents and decisions in Chinese, and that Chinese is used in the courts and for official business. It notes that, under article 9 of the Basic Law, both Chinese and Portuguese can be used as official languages after 19 December 1999.

6. The Committee also notes with satisfaction that Portugal and China reached agreement in March 1998 on the principles underlying the new organization of the legal system, which guarantee the non-removability of judges and the autonomy and independence of the judiciary.

C. Principal subjects of concern and Committee recommendations

7. The Committee notes with great concern that on the eve of the territory of Macao being returned to the sovereignty of the Peoples Republic of China, it still remains unclear which laws, including human rights laws, will be held incompatible with the Basic Law of the Macao Special administrative Region and therefore become invalid after 19 December 1999.

The Committee wishes to underline the obligation of the State Party, according to article 2 of the Covenant, as well as that of the State under whose jurisdiction the territory will be, to ensure that the population of Macao remain fully protected under the Covenant after 19 December 1999.

8. The Committee notes the Ombudsman functions of the High Commissioner against Corruption and Administrative Illegality, and the petition procedure; however, it regrets the absence of an independent, statutory Human Rights Commission with a mandate to monitor the implementation of human rights legislation.

Such a Commission should be established.

9. The Committee is concerned at the paucity of judges, lawyers and interpreters, which might adversely affect the administration of justice.

Further efforts should be made to train lawyers and interpreters and give them a specialization in human rights.

10. The Committee is concerned that, despite guarantees of equality in the Constitution also reflected in article 25 of the Basic Law, and in labour legislation, *de facto* inequalities continue with regard to the status of women and their remuneration.

Effective measures should be taken to eliminate such inequalities.

11. The Committee notes reports that organized crime and, in particular, trafficking in women and prostitution, persist in Macao. It acknowledges that the

Penal Code prohibits organized crime, but is concerned at the authorities' failure to take action to protect the victims.

Preventive action should be taken to stamp out trafficking in women and rehabilitation programmes for the victims should be provided. The victims should be protected and supported by laws and policies of the State party.

12. The Committee is concerned at certain aspects of Law 6/97/M (promoting, founding or supporting a secret association), namely the creation of a vague and insufficiently defined (or "abstract") offence, and the imposition of an increased sentence, or conviction, on the basis that the person is a "habitual offender" or is likely to repeat such an offence.

Penal legislation should be brought into line with articles 14 and 15 of the Covenant, in particular the prohibition on trying a person or placing him/her in jeopardy, twice for the same offence (*non bis in idem*, article 14, para. 7) and the ban on laws with retroactive effect (*nullum crimen sine lege, nulla poena sine lege*, article 15).

13. The Committee is concerned that the Governments of China and Portugal have not yet reached firm agreement on the nationality of residents of Macao after 19 December 1999, and that the criteria which will determine which Macao residents may be regarded as being of Portuguese origin are not yet known.

Effective measures should be taken to safeguard the rights of those who at present hold dual citizenship.

14. The Committee is also concerned that no firm agreement has been reached on the transfer of residents of the Macao Special Administrative Region to face trial in other jurisdictions in China, or their extradition to other countries in cases where they may face heavier penalties than those laid down in the Macao Penal Code, including the death penalty.

The Committee reiterates that Macao residents enjoy the protection of the Covenant and should not lose that protection by being transferred to other jurisdictions.

15. The Committee is concerned at the lack of firm agreements guaranteeing freedom of the press and expression after 19 December 1999.

Effective measures should be taken to guarantee those freedoms for the future.

16. The Committee is concerned at the paucity of non-governmental human-rights organizations and the fact that their establishment is not being encouraged.

D. Dissemination

17. The Committee regrets that the public in general is not adequately informed of the Human Rights Committee's consideration of the report. The Committee recommends that the State party distribute the text of its report and these Concluding Observations widely. The State party's next report should be prepared on an article by article basis, in accordance with the Committee's new Guidelines (CCPR/C/66/GUI) and should give particular attention to the issues raised by the Committee in these Concluding Observations. It sets the date for the next report on the implementation of the Covenant in Macao as 31 October 2001.